

## Environmental Protection Agency

## § 89.7

materials are available from the sources listed below.

(a) *ASTM material.* Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428-2959, or by calling (877) 909-ASTM, or at <http://www.astm.org>.

(1) ASTM D86-97, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, IBR approved for appendix A to subpart D.

(2) ASTM D93-09 (Approved December 15, 2009), Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester, IBR approved for appendix A to subpart D.

(3) ASTM D129-95, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for appendix A to subpart D.

(4) ASTM D287-92, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method), IBR approved for appendix A to subpart D.

(5) ASTM D445-09 (Approved July 1, 2009), Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity), IBR approved for appendix A to subpart D.

(6) ASTM D613-95, Standard Test Method for Cetane Number of Diesel Fuel Oil, IBR approved for appendix A to subpart D.

(7) ASTM D1319-98, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption, IBR approved for appendix A to subpart D.

(8) ASTM D2622-98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for appendix A to subpart D.

(9) ASTM D5186-96, Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels By Supercritical Fluid Chromatography, IBR approved for appendix A to subpart D.

(10) ASTM E29-93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, IBR approved for §§ 89.120, 89.207, 89.509.

(b) *California Air Resources Board Test Procedure.* The material is from Title 13, California Code of Regulations, Sections 2420-2427, as amended by California Air Resources Board Resolution 92-2 and published in California Air Resources Board mail out #93-42, September 1, 1993. Copies of these materials may be obtained from the California Air Resources Board, Haagen-Smit Laboratory, 9528 Telstar Ave., El Monte, CA 91731-2908, or by calling (800) 242-4450.

(1) California Regulations for New 1996 and Later Heavy-Duty Off-Road Diesel Cycle Engines, IBR approved for §§ 89.112, 89.119, 89.508.

(2) [Reserved]

(c) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096-0001, or by calling (877) 606-7323 (United States and Canada only) or (724) 776-4970 (outside the United States and Canada only), or at <http://www.sae.org>.

(1) SAE J244, June 83, Recommended Practice for Measurement of Intake Air or Exhaust Gas Flow of Diesel Engines, IBR approved for § 89.416.

(2) SAE J1937, November 89, Recommended Practice for Engine Testing with Low Temperature Charge Air Cooler Systems in a Dynamometer Test Cell, IBR approved for § 89.327.

(3) SAE Paper 770141, 1977, Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts, Glenn D. Reschke, IBR approved for § 89.319.

[77 FR 2461, Jan. 18, 2012]

### § 89.7 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by part 2, subpart B of this chapter.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a manufacturer must indicate clearly the items of information

claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with § 2.204(c)(2)(i)(A) of this chapter.

#### APPENDIX A TO SUBPART A OF PART 89— STATE REGULATION OF NONROAD INTERNAL COMBUSTION ENGINES

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.

EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act.

[62 FR 67736, Dec. 30, 1997]

### Subpart B—Emission Standards and Certification Provisions

#### § 89.101 Applicability.

(a) The requirements of subpart B of this part are applicable to all new nonroad compression-ignition engines

subject to the provisions of subpart A of this part 89, pursuant to the schedule delineated in § 89.102.

(b) In a given model year, you may ask us to approve the use of procedures for certification, labeling, reporting, and recordkeeping specified in 40 CFR part 1039 or 1068 instead of the comparable procedures specified in this part 89. We will approve the request as long as it does not prevent us from ensuring that you fully comply with the intent of this part.

[72 FR 53127, Sept. 18, 2007]

#### § 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

(a) This subpart applies to all engines described in § 89.101 with the following power rating and manufactured after the following dates:

- (1) Less than 19 kW and manufactured on or after January 1, 2000;
- (2) Greater than or equal to 19 kW but less than 37 kW and manufactured on or after January 1, 1999;
- (3) Greater than or equal to 37 kW but less than 75 kW and manufactured on or after January 1, 1998;
- (4) Greater than or equal to 75 kW but less than 130 kW and manufactured on or after January 1, 1997;
- (5) Greater than or equal to 130 kW but less than or equal to 560 kW and manufactured on or after January 1, 1996;
- (6) Greater than 560 kW and manufactured on or after January 1, 2000.

(b) A manufacturer can optionally certify engines manufactured up to one calendar year prior to the effective date of mandatory certification to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part.

(c) Engines meeting the voluntary standards described in § 89.112(f) may be designated as Blue Sky Series engines through the 2004 model year.

(d) *Implementation flexibility for equipment and vehicle manufacturers and post-manufacture marinizers.* Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions